

Keystone Shipping Co., and its affiliate Keystone Barge Services, Inc., Joint Employers and Southeast Regional Fleet Tankermens Association (SERF)

Keystone Shipping Co., and its affiliate Keystone Barge Services, Inc., Joint Employers and District No. 4, NMU/MEBA (AFL-CIO) and Southeast Regional Fleet Tankermens Association (SERF). Cases 16-CA-17550, 16-CA-17830, and 16-CB-4895

March 18, 1999

DECISION AND ORDER

**BY CHAIRMAN TRUESDALE AND MEMBERS
HURTGEN AND BRAME**

Upon charges and amended charges filed by Southeast Regional Fleet Tankermens Association (SERF) the General Counsel of the National Labor Relations Board issued an order consolidating cases, amended consolidated complaint and notice of hearing on March 29, 1996. The amended consolidated complaint alleges that Keystone Shipping Co., and its affiliate Keystone Barge Services, Inc., Joint Employers (Keystone) violated Section 8(a)(2) and (1) of the Act by recognizing District No. 4, NMU/MEBA (AFL-CIO) (NMU) as the collective-bargaining representative of the unit employees even though NMU did not represent an uncoerced majority in the bargaining unit, and by encouraging its employees to join NMU. The complaint also alleges that NMU violated Section 8(b)(1)(A) and (2) of the Act by acting as the collective-bargaining representative of the bargaining unit employees and by requiring those employees to pay union dues or equivalent fees. Respondent NMU filed an answer to the complaint. Respondent Keystone takes no position.

On September 23, 1996, the parties jointly filed a motion to transfer the proceeding to the Board together with a stipulation of facts signed by the parties. The parties waived a hearing before an administrative law judge and the issuance of an administrative law judge's decision and recommended Order. The parties agreed that the stipulation, with attached exhibits, including the charges and amended charges, the complaint and amended consolidated complaint, and the answer, shall constitute the entire record in this case and that no oral testimony is necessary or desired by any of the parties.

On December 18, 1996, the Board issued an order approving the stipulation of facts and transferring the proceeding to the Board. The General Counsel, NMU, and SERF filed briefs. SERF filed an attachment. NMU also filed a motion to strike SERF's brief and attachment and a brief in support of the motion and in answer to the

General Counsel's and SERF's briefs. SERF filed an opposition to NMU's motion to strike.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Keystone is a Delaware corporation engaged in the operation of oceangoing tanker vessels, cargo vessels, and tug/barge vessels from its offices located at One Bala Plaza East, Suite 600, Bala Cynwyd, Pennsylvania. Since July 17, 1995, Keystone, in conducting its business operations, provided services valued in excess of \$50,000 for Texaco Marine Services, Inc. (Texaco), an enterprise directly engaged in interstate commerce. We find that Keystone is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We also find that Respondent NMU and Charging Party SERF are labor organizations within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Keystone operates various vessels as managing agent for other companies—20 United States flag oceangoing tanker vessels of various sizes and configurations carrying petroleum related products and chemicals; 2 foreign flag tanker vessels; 6 United States flag dry-cargo vessels operated under contract with the United States Maritime Administration; and 2 United States flag tug/barge vessels. These last two vessels are the *Victory/Texas* and *Valiant/Pennsylvania* and it is their crews that both NMU and SERF seek to represent.

Bulkfleet Marine constructed the two tug/barges at issue here in 1979 and operated them under a charter agreement with Gulf Oil from 1981 to 1986. From 1986 to 1988, Bulkfleet Marine operated the vessels under charters from Mobil Oil and the United States Government. From 1981 to 1988, the Seafarers' International Union of North America (SIU) represented all licensed and unlicensed employees on the two tug/barges in two separate units but negotiated agreements simultaneously. In 1988, Bulkfleet Marine entered into an agreement with Texaco whereby Texaco assumed operation of the two tug/barges. Under this agreement, most of the seagoing personnel on the tug/barge vessels were retained as Texaco employees, but were no longer represented by SIU.

¹ NMU's motion to strike SERF's brief and attachment is denied. NMU contends that SERF's brief was untimely filed and cites facts beyond those stipulated to by the parties. We note that SERF's opposition attests to SERF's deposit of its brief in the mail in a timely fashion. We also note that we rely only on those facts to which the parties stipulated in making our findings here. In these circumstances, we find it unnecessary to strike SERF's brief and attachment.

In 1989, SERF filed a petition with the Board seeking to represent the employees of the two tug/barges in a single unit.² NMU intervened in the proceeding and argued that the employees had been accreted into a multi-employer unit of unlicensed seamen represented by NMU and covered by the master agreement between NMU and the multiemployer association, Tanker Service Committee/Maritime Service Committee (TSC/MSC), of which Texaco was a member.³ The Regional Director for Region 16 rejected NMU's arguments and found the petitioned-for unit appropriate. He also invited NMU to make the required showing of interest to appear on the ballot, but NMU failed to do so. NMU requested review of the Regional Director's decision, but the Board denied this request. On October 16, 1989, the Board certified SERF as the representative of the employees in the following unit:

INCLUDED: All senior mechanic tankermen, mechanic tankermen, and cooks employed at the Employer's Port Arthur, Texas, facility aboard the tug boat *Valiant* and barge *Pennsylvania* and the tug boat *Victory* and barge *Texas*.

EXCLUDED: All other employees, guards and supervisors as defined in the Act.

Thereafter, from October 16, 1989, to July 17, 1995, SERF and Texaco entered a series of collective-bargaining agreements covering the Board-certified unit.

On July 17, 1995, with the consent of Bulkfleet Marine, Keystone entered into an agreement with Texaco under which Keystone assumed the operation of the *Victory/Texas* and the *Valiant/Pennsylvania*. Keystone offered employment to all the seagoing personnel working for Texaco on the two tug/barges. In a letter dated July 17, 1995, SERF requested that Keystone recognize it as the collective-bargaining representative of the licensed and unlicensed crewmembers of the two tug/barges. Prior to that date, NMU informed Keystone that the employees has been accreted into the TSC/MSC multi-employer unit represented by NMU and covered by NMU's master agreement with TSC/MSC and its member, Keystone.⁴ NMU also cited the 1989 arbitration

award which found the two tug/barges were encompassed within the description of vessels covered by the TSC/MSC master agreement's recognition clause. As provided for in the master agreement, Keystone and NMU entered into a memorandum of understanding, effective July 19, 1995, which adapted the master agreement to the special needs and characteristics of the tug/barge vessel unit. At no time did NMU demonstrate to Keystone that it represented an uncoerced majority of the employees in the unit set forth above. Keystone and NMU gave the crews of the two tug/barges copies of the TSC/MSC master agreement and supplemental memorandum of understanding regarding the tug/barge vessels. NMU also notified the crewmembers in writing of their obligations under the union-security clause, including the obligation to pay union dues, and of NMU's intention to enforce the clause by, inter alia, seeking the crewmembers' discharge if they failed to comply.⁵

The employees complied with NMU's requests under duress. They signed a petition announcing that they wished "to be represented for collective bargaining purposes by Southeast Regional Fleet Association (SERF)." They also mailed a formal protest to NMU announcing:

- That SERF is the sole and exclusive bargaining agent for Tug/Barges;
- That all the seamen on the *Victory* are currently paid up members of SERF;
- That over 95% of the all seamen on the *Valiant* are currently paid up SERF members.
- That SERF members are not joining NMU;
- That SERF or the unlicensed seamen are not recognizing NMU;
- That a service charge* is being tender [sic] under protest and subject to repayment; and
- That this action is being taken to prevent breach of the peace and promote efficient business operations and is being taken without prejudice to any and all rights of unlicensed seamen in their individual capacities, and in their represented capacities, and without waiver of their existing, private vested

² Although there were two prior units (one for each tug/barge) when SIU represented the employees, the significant point is that those tug/barge units were separated from the rest of the fleet.

³ NMU has had a collective-bargaining relationship with the TSC/MSC since the 1950s. NMU filed a grievance against Texaco for its failure to apply the TSC/MSC master agreement to the employees of the two tug/barges. On September 15, 1989, Arbitrator Jesse Simons found that the two tug/barges were encompassed within the description of the vessels covered by the TSC/MSC master agreement's recognition clause, but provided no remedy in light of the Board's determination of an alternative bargaining unit.

⁴ Keystone is the largest Employer in the TSC/MSC with whom NMU maintains its master agreement. The *Victory/Texas* and *Valiant/Pennsylvania* are the sole tug/barge vessels in the Keystone fleet. There are other tug/barge vessels operated by employers other than

Keystone in the TSC/MSC. NMU has represented crewmen on tug/barges in Amoco, Gulf Oil, and Marine Transport Lines fleets.

⁵ NMU provided employees with authorizations to allow Keystone to deduct dues and fees from their wages and remit the moneys to NMU. There have been some disputes about the failure of certain employees to pay dues and Keystone's failure to enforce its contractual obligation to discharge these employees. On September 22, 1995, NMU notified Paul Curran, Martin Garcia, and Donald Walsh that NMU would ask Keystone to discharge them if they failed to remit dues and fees pursuant to the TSC/MSC agreement. The following month, these employees executed written authorizations and Keystone deducted dues and fees from their wages. At the same time, NMU pursued the matter through the contractual grievance machinery, including a request for expedited arbitration. Keystone agreed to take measures to ensure that all dues were paid by November 3, 1995.

and guaranteed contractual employment rights.

* for a disservice

Keystone operates all its vessels from its facility in Bala Cynwyd, Pennsylvania. The marine personnel department engages the personnel for all vessels, provides transportation for crewmembers, relief for crewmen leaving the vessels for vacations, handles labor relations matters such as grievances and arbitrations, and generally deals with the requirements of staffing the vessels through the NMU hiring hall. The traffic department communicates voyage orders to the vessels after receiving these orders from the charter customer. The voyage order delineates the cargo to be loaded or discharged, ports of call, bunkers (fuel oil) to take on board for the voyage, and agents to utilize. The accounting department prepares and/or audits payrolls for the personnel on all Keystone vessels. The personnel department receives the payroll information from the vessel captains and provides it to the accounting department for the tug/barge vessels and certain other vessels. All other personnel, including crewmembers of the oceangoing tankers, are paid on their respective vessels. The operations department monitors the loading and discharge of all cargo, purchases and delivers supplies, and handles problems encountered by the vessels while at sea. Keystone does not have a shipyard for the docking of vessels. Vessel repairs are performed pursuant to a nationwide bid.

Keystone retained the same crew complement as Texaco for the two tug/barges at issue here although it discontinued the occasional use of painters. There are 11 berths on each tug/barge—4 deck officers (captain/master; first, second and third mate); 3 engine department officers (chief engineer; first and second engineer); and 4 unlicensed seamen (3 tankermen and 1 cook). There is a relief crew for each tug/barge for a total of 44 seamen. Since Keystone commenced operating the two tug/barges, Keystone filled three permanent and two relief vacancies with seamen referred by NMU hiring halls. The TSC/MSC master agreement allows Keystone to go outside the hiring hall when no employee is available through the hall. Keystone has done this for one permanent and one relief position on the two tug/barges. The employees referred by the NMU hiring halls have experience working on vessels other than tugs/barges.⁶ The NMU hiring hall makes no distinction between vessels for accumulating seniority. Furthermore, NMU's National Shipping Rules pursuant to the TSC/MSC master agreement allow unit employees to bid

on any job available aboard any fleet vessel if the unit employee is qualified.⁷

The two tug/barges carry clean petroleum products for various oil companies or companies that buy and resell oil products. *Victory/Texas* operates primarily along the East Coast and across the Gulf of Mexico. *Valiant/Pennsylvania* operates primarily between Louisiana and Puerto Rico. Other Keystone vessels perform the same type of service as the two tug/barges although these vessels are not tug/barges (see fn. 4, *supra*). These vessels service different routes. The crewmembers on the tug/barge vessels load and discharge petroleum products, as do employees on Keystone's other vessels. The crewmembers perform their work according to standard maritime practice and procedures. Prior to Keystone's assumption of operations, the crewmembers worked a 30-day, on-off cycle. They earn 1 day of compensated time off for each day they work on the tug/barges. Keystone negotiated with NMU to allow Keystone to increase the work cycle to 45 days if Keystone deems it necessary. Unlicensed crewmembers on Keystone's tankers receive 13 days of paid vacation for every 30 days worked and work tours of duty ranging from 30 days to 6 months, with an average of 3 to 4 months. The total annual earnings including wages, overtime, and vacation pay for unlicensed seamen aboard tanker vessels is approximately the same as those for seamen aboard the two tug/barges. The difference in the distribution of earnings between actual wages, overtime, and vacation pay between seamen on tanker vessels and seamen on the two tug/barges is primarily due to differences in the length of voyages made by the respective vessels.

The basic tasks performed by the unlicensed seamen on the two tug/barges are comparable to those of seamen working on tankers, freighters, or other vessels of Keystone. Nevertheless, tug/barge work is different due to the close living quarters shared by the entire crew. On the tug/barge vessels, the licensed and unlicensed crew members share a common mess room. The crews on Keystone's tanker vessels have separate rooms and the unlicensed and licensed crewmembers eat in separate mess rooms. Moreover, the tug/barge vessels provide a less stable ride than that of the generally considerably larger tankers.

B. Issues

The issue is whether Respondent Keystone violated Section 8(a)(2) and (1) of the Act by recognizing NMU as the collective-bargaining representative of the employees on the two tug/barges, *Victory/Texas* and *Valiant/Pennsylvania*, and by encouraging the employees to join NMU, even though NMU did not represent an unco-

⁶ Keystone typically looks for individuals with tug/barge experience to work on the tug/barge crews and individuals with tanker experience to work on tanker crews.

⁷ While Texaco operated the two tug/barges from 1988 to 1995, there was no interchange of employees between these vessels and other vessels in the TSC/MSC multiemployer bargaining unit of multiple vessels of various types.

erced majority in the bargaining unit; and whether Respondent NMU violated Section 8(b)(1)(A) and (2) of the Act by applying its TSC/MSC master agreement to the employees on the two tug/barges.

C. Contentions of the Parties

Respondent NMU contends that the employees on the two tug/barges accreted to the fleetwide bargaining unit represented by NMU pursuant to its TSC/MSC master agreement. NMU maintains that three factors validate its position: (1) the Board's presumption in favor of a fleetwide unit in the maritime industry; (2) the TSC/MSC master agreement's specific application to tug/barges pursuant to its recognition clause and the arbitral finding to this effect; and (3) the Board's standard accretion factors and their satisfaction here.

SERF and the General Counsel contend that the separate unit bargaining history of the two tug/barges' employees constitutes a valid exception to the fleetwide presumption and precludes accretion here. They maintain that the unit's approximately 15-year history of separate representation from the outset, including 5 years in a Board-certified unit, warrants finding the *Victory/Texas* and *Valiant/Pennsylvania* unit appropriate.

D. Discussion

It is well-established that, as a general proposition, units of seagoing personnel should be fleetwide in scope.⁸ Such a pattern prevails in the maritime industry for its obvious advantages: it eliminates interunion rivalry with respect to similar employees of the same employer employed on different vessels, thereby diminishing conflicts and possible work stoppages; and it facilitates the transfer of personnel between ships of the same employer and ships belonging to different shipowners.⁹

However, it is also well-established that the reasons for finding a fleetwide unit appropriate may be overcome in a particular case by special circumstances that indicate the injustice or the unsuitability of applying the general rule.¹⁰ Indeed, the seminal *Moore-McCormack* case illustrated just such special circumstances. There a union petitioned the Board for a fleetwide unit. The *Moore-McCormack* Board found the unit inappropriate because seven of the vessels in the petitioned-for unit had a 5-year history of separate bargaining in a Board-sanctioned unit following a 1957 Board election. That history had begun as follows. The seven vessels had been transferred from one employer to another. The union that represented the employees on the seven vessels petitioned for continued representation. The rival union, representing the new employer's employees, opposed the petition on the ground that the seven vessels were an accretion to the new employer's fleet. The Board re-

jected the rival union's contention, and conducted the election in the seven-vessel unit in 1957. The petitioning union won the election and was certified. By the time of the *Moore-McCormack* decision in 1962, that certification and representation were 5 years' old. In rejecting the petitioned-for fleetwide unit in 1962, the *Moore-McCormack* Board emphasized its own prior determination in sanctioning the separate unit and the bargaining history based on that determination.¹¹ The Board therefore affirmed the Regional Director's dismissal of the union's petition for a fleetwide unit, citing "the special facts of this case."¹²

We find striking similarities here. When Texaco assumed operation of the *Victory/Texas* and *Valiant/Pennsylvania*, SERF filed a petition with the Board seeking to represent the crews of the two tug/barges as a single unit, and NMU intervened arguing that these crews had accreted to Texaco's fleetwide unit which NMU represented.¹³ The Board certified SERF as the representative of the crews of the two tug/barges on October 16, 1989, and SERF successfully negotiated collective-bargaining agreements with Texaco for this separate unit until July 17, 1995. When Keystone assumed operation of the *Victory/Texas* and the *Valiant/Pennsylvania* on July 17, 1995, Keystone and NMU applied the TSC/MSC master agreement to the two tug/barges as part of Keystone's fleetwide unit. As a result, SERF filed the unfair labor practice charges at issue here. Thus, in this case, just as in *Moore-McCormack*, the Board has made a prior determination that the crews of the two tug/barges constitute a separate appropriate unit apart from a fleetwide unit, and there has been a period of bargaining with agreements between the parties based on that prior determination.¹⁴

Finally, we note that NMU contends that the 1989 certification should be revoked because, subsequent thereto,

¹¹ *Moore-McCormack*, supra at 799. In *Moore-McCormack* the Board noted two other facts: (1) the employer, which was the party most likely to be the most inconvenienced by the separate seven-ship unit, was not seeking to abolish it; and (2) an arbitrator found the union seeking the fleetwide unit to be in violation of the AFL-CIO no-raiding agreement. We particularly note that the *Moore-McCormack* Board found the bargaining history in a separate Board-sanctioned unit to be sufficiently compelling to warrant bypassing an analysis of standard accretion factors.

¹² *Moore-McCormack*, supra at 799-800.

¹³ As we stated in fn. 3, supra, in 1989 NMU won an arbitration award pursuant to the TSC/MSC master agreement's recognition clause. NMU now contends that this warrants a finding that the fleetwide unit is appropriate here. It is clear that the Board does not defer to arbitral awards in cases involving the issue of appropriateness of bargaining units. In this case, NMU ignores the almost 15 years that the employees of the two tug/barges existed as a separate bargaining unit. Such overwhelming bargaining history in a separate bargaining unit overrides the TSC/MSC master agreement's recognition clause and the arbitral award, and NMU's reliance on these is misplaced.

¹⁴ We also note that Keystone, like the employer in *Moore-McCormack*, does not seek to abolish the separate two tug/barge unit represented by SERF.

⁸ *Moore-McCormack Lines, Inc.*, 139 NLRB 796, 798 (1962).

⁹ Id. at 798-799.

¹⁰ *Moore-McCormack*, supra at 799.

supervisors have served on SERF's executive committee and as SERF presidents and treasurers. However, this case does not raise the issue of whether SERF should be disqualified from representation. It raises only the issue of whether NMU is the appropriate representative. For the reasons set forth above, we conclude that it is not.

CONCLUSIONS OF LAW

1. Respondent Employer Keystone Shipping Co., and its affiliate Keystone Barge Services, Inc., Joint Employers is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Union District No. 4, NMU/MEBA (AFL-CIO) is a labor organization within the meaning of Section 2(5) of the Act.

3. By recognizing NMU and enforcing the union-security provisions of the collective-bargaining agreement between NMU and Keystone with respect to employees in a unit of all senior mechanic tankermen, mechanic tankermen, and cooks aboard the tugboat *Victory* and barge *Texas* and tugboat *Valiant* and barge *Pennsylvania*, excluding all other employees, guards and supervisors as defined in the Act, when NMU did not represent an uncoerced majority of employees in the unit, Respondent Keystone has rendered and is rendering unlawful assistance and support to a labor organization, in violation of Section 8(a)(1) and (2) of the Act.

4. By accepting exclusive recognition as the representative of Respondent Keystone's employees in the designated unit at a time when it did not represent an uncoerced majority of these employees; by notifying the designated unit employees that it would ask Keystone to discharge them if they did not pay dues and fees; by requesting Keystone to discharge employees Donald Walsh, Paul Curran, and Martin Garcia because these employees failed to remit dues and fees; by grieving to arbitration Keystone's failure to enforce its contractual obligation to discharge the designated unit employees who failed to remit dues and fees; and by receiving aid, assistance, and support in the form of moneys which Keystone deducted from the wages of the employees in the designated unit and remitted to it, Respondent NMU has restrained and coerced, and is restraining and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, in violation of Section 8(b)(1)(A) and (2) of the Act.

THE REMEDY

Having found that Respondents Keystone and NMU engaged in unfair labor practices in violation of Section 8(a)(1) and (2) and 8(b)(1)(A) and (2) of the Act, we shall order them to cease and desist therefrom and to take the following affirmative actions which are necessary to effectuate the policies of the Act. In order to dissipate the effect of these unfair labor practices, Respondent Keystone shall withdraw and withhold recognition from Respondent NMU; NMU shall cease accepting recogni-

tion from Keystone; and both NMU and Keystone shall cease enforcing the union-security provisions of the collective-bargaining agreement between them, or any successor, concerning the employees in the designated unit, unless and until such time as NMU shall have been certified by the Board; provided, however, that nothing in the remedial order shall require Keystone to withdraw or eliminate any wage increases or other benefits, terms, or conditions of employment which may have been established pursuant to any such agreement.

By virtue of the fact that Respondents Keystone and NMU have given effect to an invalid union-security provision requiring payment of union dues as a condition of employment or continued employment and that the clause has also improperly authorized checkoff of union dues from the pay of unit employees, Respondents Keystone and NMU shall jointly and severally be required to reimburse all the designated unit employees for fees and moneys deducted from their pay in requiring them to execute union applications and checkoff authorization cards on behalf of NMU, with interest added to such reimbursements in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977), and *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

ORDER

The National Labor Relations Board orders that

A. Respondent Employer Keystone Shipping Co., and its affiliate Keystone Barge Services, Inc., Joint Employers, Bala Cynwyd, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Recognizing and assisting and supporting Respondent District No. 4, NMU/MEBA (AFL-CIO), by enforcing the union-security provisions of the collective-bargaining agreement between NMU and Keystone with respect to its employees in the unit of all senior mechanic tankermen, mechanic tankermen, and cooks aboard the tugboat *Valiant* and barge *Pennsylvania* and the tugboat *Victory* and barge *Texas*, excluding all other employees, guards and supervisors as defined in the Act, unless and until NMU is certified by the Board as the collective-bargaining representative of the unit employees pursuant to Section 9(c) of the Act; provided, however, that nothing in this Order shall require the withdrawal or elimination of any wage increases or other benefits, terms, or conditions of employment which may have been established pursuant to the collective-bargaining agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw and withhold all recognition from Respondent NMU as the collective-bargaining representative of the designated unit employees, unless and until

NMU has been duly certified by the Board as the exclusive representative of such employees.

(b) Jointly and severally, with Respondent NMU, reimburse its past and present employees, for all dues and fees and other moneys withheld from their pay pursuant to the collective-bargaining agreement between NMU and Keystone, or any successor agreement, plus interest, in the manner set forth in the remedy section.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the amount of reimbursement of dues or fees or other moneys.

(d) Within 14 days after service by the Region, post at its Bala Cynwyd, Pennsylvania office and aboard the tugboat *Valiant* and barge *Pennsylvania* and tugboat *Victory* and barge *Texas*, copies of the attached notices marked "Appendix A."¹⁵ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by Keystone's authorized representative, shall be posted by Keystone and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Keystone to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Keystone has gone out of business or closed the facility involved in these proceedings, Keystone shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Keystone at any time since July 19, 1995.

(e) Post at the same places and under the same conditions set forth in (d) above, as they are forwarded by the Regional Director, copies of Respondent NMU's notice marked "Appendix B."

(f) Within 14 days after service by the Region, mail signed copies of the attached notice marked "Appendix A" to the Regional Director for posting at Respondent NMU's offices and meeting halls.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent Keystone has taken to comply.

B. Respondent Union District No. 4, NMU/MEBA (AFL-CIO) its officers, agents, and representatives, shall

1. Cease and desist from

(a) Accepting exclusive recognition as the representative of Respondent Keystone's employees in the designated unit by enforcing the union-security provisions of the collective-bargaining agreement between NMU and Keystone; notifying the designated employees that it will ask Keystone to discharge them if they did not pay dues and fees; requesting Keystone to discharge employees Donald Walsh, Paul Curran, and Martin Garcia because these employees failed to remit dues and fees, grieving to arbitration Keystone's failure to enforce its contractual obligation to discharge the designated unit employees who failed to remit dues and fees; and receiving aid, assistance, and support in the form of moneys which Keystone deducted from the wages of the employees in the designated unit and remitted to it, at a time when NMU does not represent an uncoerced majority of employees in the unit.

(b) Acting as the exclusive bargaining representative of the employees in the unit unless and until NMU has been certified by the Board as the exclusive bargaining representative of the unit employees.

(c) In any like or related manner restraining or coercing Keystone's employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Jointly and severally with Respondent Keystone, reimburse its past and present employees, for all dues or fees or other moneys withheld from their pay pursuant to the agreement between NMU and Keystone, or any successor agreement, plus interest, in the manner set forth in the remedy section.

(b) Within 14 days after service by the Region, post at its offices and meeting halls copies of the attached notice marked "Appendix B."¹⁶ Copies of the notice, on forms provided by the Regional Director for Region 16, after being signed by NMU's authorized representative, shall be posted by NMU and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by NMU to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed its offices and meeting halls involved in these proceedings, NMU shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent Keystone at any time since July 19, 1995.

(c) Post at the same places and under the same conditions as set forth in (b) above, as they are forwarded by the Regional Director, copies of Respondent Keystone's notice marked "Appendix A."

(d) Within 14 days after service by the Region, mail signed copies of the attached notice marked "Appendix B" to the Regional Director for posting at Respondent

¹⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹⁶ See fn. 15, *supra*.

Keystone's offices and aboard the tugboat *Valiant* and barge *Pennsylvania* and tugboat *Victory* and barge *Texas*.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent NMU has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT recognize and assist and support District No. 4, NMU/MEBA (AFL-CIO) (NMU) by enforcing the union-security provisions of the collective-bargaining agreement between us and NMU with respect to the employees in the unit of all senior mechanic tankermen, tankermen and cooks aboard the tugboat *Valiant* and barge *Pennsylvania* and the tugboat *Victory* and barge *Texas*, excluding all other employees, guards, and supervisors as defined in the Act, unless and until NMU is certified by the Board as the collective-bargaining representative of the designated unit employees pursuant to Section 9(c) of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL withdraw and withhold all recognition from NMU as the collective-bargaining representative of our employees in the designated unit unless and until NMU has been duly certified by the Board as their exclusive representative.

WE WILL, jointly and severally with NMU, reimburse our past and present employees for all dues and fees and other moneys withheld from their pay pursuant to our collective-bargaining agreement with NMU, or any successor agreement, plus interest.

KEYSTONE SHIPPING CO., AND ITS
AFFILIATE KEYSTONE BARGE
SERVICES, INC., JOINT EMPLOYERS

APPENDIX B

NOTICE TO MEMBERS POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT accept exclusive recognition as the representative of employees of Keystone Shipping Co., and its affiliate Keystone Barge Services, Inc., Joint Employers, by enforcing the union-security provisions of the collective-bargaining agreement between us and Keystone with respect to the unit of all senior mechanic tankermen, tankermen, and cooks aboard the tugboat *Valiant* and barge *Pennsylvania* and the tugboat *Victory* and barge *Texas*, excluding all other employees, guards, and supervisors as defined in the Act, unless and until we are certified by the Board as the collective-bargaining representative of the designated unit employees pursuant to Section 9(c) of the Act.

WE WILL NOT notify employees in the designated unit that we will ask Keystone to discharge them if they do not pay dues and fees.

WE WILL NOT ask Keystone to discharge employees Donald Walsh, Paul Curran, and Martin Garcia because these employees failed to remit dues and fees.

WE WILL NOT grieve to arbitration Keystone's failure to enforce its contractual obligation to discharge the designated unit employees who failed to remit dues and fees.

WE WILL NOT receive aid, assistance, and support in the form of moneys which Keystone deducted from the wages of the employees in the designated unit and remitted to us, at a time when we did not represent an uncoerced majority of employees in the unit.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of rights guaranteed you by Section 7 of the Act.

WE WILL, jointly and severally with Keystone, reimburse its past and present employees for all dues and fees and other moneys withheld from their pay pursuant to our collective-bargaining agreement with Keystone, or any successor agreement, plus interest.

DISTRICT NO. 4, NMU/MEBA (AFL-CIO)

